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February 10, 2000

VIA COURIER

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street S.W.
Room TW-204B
Washington, DC 20554

Re: Joint Comments in MM Docket No. 00-10

Dear Ms. Salas:

Transmitted herewith, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, are an original and fourteen copies of Joint Comments in the above-captioned proceeding filed by the Board of Trustees, Coast Community College District, licensee of Non-Commercial Educational Station KOCE-TV, Huntington Beach, CA, Costa de Oro Television, Inc., licensee of Station KJLA(TV), Ventura, CA, and Rancho Palos Verdes Broadcasters, Inc., permittee of Station KRPA(TV), Rancho Palos Verdes, CA. It is respectfully requested that each Commissioner be provided one copy of these Joint Comments.

It also is respectfully requested that the enclosed copy of this transmittal be date-stamped as "received" and returned to us in the enclosed, stamped self-addressed envelope. Please feel free to contact the undersigned directly if there are any questions concerning this filing.

Very truly yours,



Barry D. Umansky
Counsel for The Board of Trustees,
Coast Community College District

BDU/af1
Enclosures

cc: Mr. Mel Rogers, KOCE-TV
Mr. Bruce Reed, KOCE-TV
Barry A. Friedman, Counsel to Costa de Oro Television, Inc.
And Rancho Palos Verdes Broadcasters, Inc.

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Establishment of a Class A)
Television Service)

MM Docket No. 00-10

MM Docket No. 99-292

RM-9260

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**JOINT COMMENTS OF THE BOARD OF TRUSTEES, COAST COMMUNITY
COLLEGE DISTRICT, COSTA DE ORO TELEVISION, INC. AND RANCHO
PALOS VERDES BROADCASTERS, INC.**

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February 10, 2000

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EXECUTIVE SUMMARY

The Joint Parties urge the Commission to adopt a regulatory regime that fully will protect the ability of television stations to maximize their DTV operations – through collocation and other means – and also will facilitate the collocation and optimization of NTSC facilities at the same antenna site as stations’ DTV operations and elsewhere. The Commission should recognize specifically the important benefits of station collocation in the context of both the DTV conversion and traditional NTSC facility improvement. Recognizing the benefits of collocation, nothing in this proceeding should jeopardize the plans and investments of television broadcasters as they improve their NTSC service and prepare for digital conversion.

It is consistent with the statutory provisions supporting Class A TV service and full-service DTV broadcasting to require Class A applicants to protect *all* full service stations seeking to maximize DTV power and service area, regardless of the existence of “technical problems” and also regardless of whether the station’s DTV transmission site is the same as the allotted site for the DTV facility. Similar latitude also should be afforded NTSC stations seeking to improve their service, particularly through collocation of facilities.

The Commission need not – and should not – continue to hold open the door for Class A conversion of LPTV stations, or new Class A facility applications, beyond the statutory deadlines for initial filings for Class A status, where this detrimentally would affect full service stations

Before the
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**JOINT COMMENTS OF THE BOARD OF TRUSTEES, COAST COMMUNITY
COLLEGE DISTRICT, COSTA DE ORO TELEVISION, INC. AND RANCHO
PALOS VERDES BROADCASTERS, INC.**

I. INTRODUCTION AND SUMMARY

Comments on certain of the proposals advanced in the Commission's *Order and Notice of Proposed Rule Making* ("Notice") in the above-captioned proceeding¹ are submitted jointly herein by the Board of Trustees, Coast Community College District ("CCCD"), licensee of Non-Commercial Educational Station KOCE-TV, Huntington Beach, CA, Costa de Oro Television, Inc. ("Costa"), licensee of Station KJLA(TV), Ventura, CA, and Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), permittee of Station KRPA(TV), Rancho Palos Verdes, CA ("Joint Parties"). The Joint Parties urge the Commission to adopt rules and policies that, while complying with the terms of the Community Broadcasters Protection Act of 1999 ("CBPA"),² also provide the greatest

¹ *Order and Notice of Proposed Rule Making* in MM Docket Nos. 00-10 and 99-292, FCC 00-16, released January 13, 2000.

² Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999).

latitude to full-service television stations as they improve their existing NTSC facilities and also transition to digital television (“DTV”) broadcasting.

In this proceeding, the FCC seeks to implement the terms of the CBPA to give “Class A TV” status to certain low power television (“LPTV”) stations. Currently, LPTV stations enjoy only “secondary” status, in that they are not protected from interference or even from elimination due to the operations of nearby full service stations. The CBPA and the *Notice* are designed to afford “primary” status to LPTV facilities eligible for and obtaining Class A status. This Class A status is conferred if an LPTV facility meets a series of standards required for this designation.³

The terms of the CBPA, while conferring new benefits on qualifying LPTV stations, also recognize the importance of preserving and enhancing the service being delivered to the public by full-service television stations, particularly as these broadcasters transition to digital operation. The CBPA addresses the impact of its terms on new and improved NTSC service and DTV service, with varying provisions related to each service.

³ An LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least three hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; (3) the station was in compliance with the Commission's requirements for LPTV stations; and (4) from and after the date of its application for a Class A license, the station is in compliance with the Commission's operating rules for full-power television stations. 47 U.S.C. § 336(f)(2)(A). The CBPA also provides that a station may qualify for Class A status if “the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.” 47 U.S.C. § 336(f)(2)(B).

Among other things, the CBPA would bar the grant of a Class A TV application where the proposal would interfere with full service DTV applicants seeking to “maximize power” under the Commission’s Rules, if these stations comply with the notification requirements found in Section (f)(1)(D) of the CBPA. That provision requires that, to be protected against Class A applicants, DTV stations must have filed at least a “notice of intent to seek maximization,” by December 31, 1999. Stations submitting a “notice of intent” by the December 31, 1999, deadline must also file an application for such maximization by May 1, 2000. The *Notice* asks a series of questions on how the Commission should interpret the statute in the varying contexts of individual NTSC stations applying for DTV authorizations.

The CBPA also addresses the potential conflict between new and modified NTSC full-service applications and Class A TV facilities. In the *Notice*, the Commission seeks comments on how to reconcile the terms of the CBPA with various, ongoing processes of adding and modifying NTSC stations. The Commission acknowledges some difficulties in squaring certain interpretations of the CBPA with the agency’s existing rules and policies that, *inter alia*, afford protection to NTSC stations from subsequent applications by other full-service stations.

On November 1, 1999, the Joint Parties filed related and contingent “minor change” applications to modify their current authorizations to specify digital operations at a common antenna site at the existing Mt. Wilson antenna farm in Los Angeles, CA.⁴ These applications specify, for each station, effective radiated power (“ERP”) and

⁴ The application file numbers are: BPEDT-19991101AKY (KOCE-DT); BPCDT-19991101AFT (KJLA-DT); and BPCDT-19991101AIZ (KRPA-DT). The Mt. Wilson

antenna height above average terrain (“HAAT”) that exceed the initially allotted ERPs and HAATs for the stations, as set forth in Appendix B of the *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Reports and Orders* in MM Docket No. 87-268.⁵ Each also has submitted a letter, filed pursuant to the Commission’s December 7, 1999, Public Notice,⁶ and the provisions of the CBPA, stating an intention to file, by May 1, 2000, an application that further will maximize each station’s DTV facilities. Additionally, the Joint Parties are, to varying degrees, developing plans for relocating their NTSC facilities to the proposed common tower site at the Mt. Wilson antenna farm.

In this proceeding the FCC must ensure that the steps taken to implement the terms of the CBPA do not threaten the orderly improvement of full service television, the service by full service broadcasters to their viewers, and the transition of over-the-air television to digital technology. Specifically, the Joint Parties believe that their efforts to maximize DTV operations, particularly through the unique benefits of digital site collocation of adjacent channel DTV facilities, should not be affected in any regard by efforts to confer “Class A” television status on certain existing LPTV stations. Indeed, the Joint Parties urge the Commission to recognize specifically the important benefits of station collocation in the context of both the DTV conversion and traditional NTSC

site is the principal antenna farm for television stations in the densely developed Los Angeles, California DMA.

⁵ *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Reports and Orders* in MM Docket No. 87-268, 14 FCC Rcd 1348 (1998).

⁶ “‘Community Broadcasters Protection Act of 1999’ Sets Deadline of December 31, 1999, for Full Service TV Stations to File Letters of Intent to Maximize Their DTV Facilities,” DA 99-2739, released December 7, 1999.

facility improvement.⁷ See Notice at ¶36. Furthermore, and as we explain in more detail below, it is the Joint Parties' strongly held view that the Commission need not – and should not – continue to hold open the door for Class A conversion of LPTV stations, or new Class A facility applications, beyond the statutory deadlines for initial filings for Class A status, where this detrimentally would affect full service stations.

II. THE CONGRESSIONAL AND FCC INTEREST IN PROMPT AND EFFICIENT DTV CONVERSION SUPPORTS FULL PRESERVATION OF STATIONS' OPTIONS FOR DTV CONVERSION AND MAXIMIZATION

A. The DTV Transition – Now in Full Swing – Must Not Be Impaired

The focus of the CBPA was on the protection of certain LPTV stations that would attain Class A status by virtue of these stations' various programming and operational commitments. Importantly, the terms of the CBPA also recognize the public policy and communications policy benefits from the transition to DTV technology. The Joint Parties urge the Commission not to ignore these important obligations.

The over-the-air television industry is in the midst of the massive conversion to digital technology. This process is designed to enhance significantly the technical level of service from local broadcasters. It is an extraordinarily expensive process, and one which truly is “reinventing” the over-the-air television service.

DTV operation, including High Definition television (“HDTV”) broadcasting, is providing much more dynamic and robust service, viewed on the new generation of television receivers. Through full HDTV and multiplexed standard definition signals, the

⁷ In this regard we point to, and rely upon below, the Commission's decision in *KRCA License Corp., et al.*, FCC 99-388, released December 14, 1999. The need for siting flexibility is especially significant in markets such as southern California, where the ability of broadcasters to relocate transmitter sites is severely constrained. *Id.* at ¶18.

public will be able to enjoy a higher technical quality and more diverse programming from local stations. Moreover, the excess digital capacity available over these stations' six megahertz channels also will afford a new level of ancillary service – including additional text, graphics and program-related or unrelated data distribution.

Concerning ancillary and supplemental use of DTV channels, the Commission already has completed a proceeding to establish (pursuant to legislation⁸) a fee schedule to be paid out of DTV stations' gross receipts from ancillary and supplementary services.⁹ In addition, the FCC has begun another proceeding examining the public interest requirements that should attach to DTV broadcasters.¹⁰

These proceedings evince some of the federal government's expectations from the digital transition and the operation of DTV facilities. Furthermore, the federal government has an overarching interest in the successful and prompt transition to digital technology in that, following the transition, there will be a return of spectrum for auction, the proceeds of which will help reduce the federal deficit.¹¹

Clearly, the Congress, the Commission, broadcasters and the viewing public have much at stake in the digital conversion. Thus, the Commission should do nothing in the instant proceeding that will impair this process or place in peril the plans and investments of television broadcasters across the country.

⁸ Pub L. No. 104-104, 110 Stat. 56 Sec. 201 (1996), codified at 47 U.S.C. § 336.

⁹ *See Report and Order* in MM Docket No.97-247, 14 FCC Rcd 3259 (1998).

¹⁰ *See Notice of Proposed Rule Making* in MM Docket No. 99-360, FCC 99-390, released December 20, 1999.

¹¹ In this regard we further note the provision in the *Clinton-Gore Administration FY2001 Budget: Maintaining Fiscal Discipline While Making Key Investments*, calling for substantial annual "lease fees" from commercial analog TV stations. The fee would apply until the station returned analog spectrum. *Communications Daily*, February 8, 2000, at 1.

B. Full Protection of All DTV Stations' Maximization Efforts Is Consistent with the Terms of the CBPA.

The Commission's *Notice* acknowledges that a Class A application for license or license modification may not be granted where the proposal would interfere with full service TV stations seeking to "maximize power" under the Commission's Rules, if the full service station has complied with the notification requirements found in section (f)(1)(D) of the statute and described above.¹² Nevertheless, and based on what the Commission considers to be some ambiguity in the terms of the CBPA, the agency seeks comment on whether the term "maximize" in the statute refers only to situations in which stations seek power and/or antenna height greater than that allotted or if it also refers to stations seeking to extend their service areas beyond the NTSC replicated area by relocating their transmitters from the allotted site.¹³

The Joint Parties submit, and the Commission concludes, that it would be consistent with the statutory provisions supporting Class A TV service and full-service DTV broadcasting to require Class A applicants to protect *all* full service stations seeking to maximize DTV power and service area, regardless of the existence of "technical problems" and also regardless of whether the station's DTV transmission site is the same as the allotted site for the DTV facility.¹⁴ The only condition on affording this complete protection to the DTV maximization process would be that the full service station has met the December 31, 1999, notification and May 1, 2000, application requirements. As

¹² *Notice*, *supra* note 1, ¶33.

¹³ *Id.*

¹⁴ *Id.*

noted above, the Joint Parties already have filed applications that “maximize” their DTV facilities and have committed, pursuant to notifications filed prior to the December 31, 1999, deadline, to file – by May 1, 2000 – applications that serve further to maximize their facilities.

C. Collocation of DTV Facilities – Encouraged by the FCC in its DTV Orders – Should be Protected by the Commission.

Continuing its consideration of the relationship between Class A applicants and full service stations transitioning to DTV, the Commission points to the position it has taken in DTV proceedings to encourage modifications to station facilities that will resolve, for example, matters of adjacent channel interference created among DTV facilities in the same market but where the DTV channels were allotted to different antenna sites. Specifically, the Commission previously has stated that it will allow flexibility in its licensing process and for modification of individual allotments to encourage adjacent channel collocations.¹⁵

On these bases, the FCC states its view that Section (1)(D) of the CBPA “appears to give full power stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters ...even after certification of an LPTV station’s eligibility for Class A status.”¹⁶ The Joint Parties, who are relying on collocation to resolve the adjacent channel interference that otherwise would result from operation of their maximized stations, strongly agree with the Commission’s interpretation of the CBPA and continuation of the policy supporting collocation.

¹⁵ Notice, *supra* note 1, ¶ 36, referring to *Memorandum Opinion and Order on Reconsideration of Sixth Report and Order*, 12 FCC Rcd 7418, at ¶ 95.

¹⁶ *Id.*

Each of the Joint Parties proposes to utilize a common transmitter site other than their existing site and that this common site will be at the existing Mt. Wilson antenna farm in Los Angeles. The KOCE-DT allotment, for example, is on the first adjacent channel to the KJLA-DT allotment. The collocation of transmitter sites will serve to minimize any interference resulting from the use of a site other than the existing site. More importantly, the use of the co-located site will allow each of the Joint Parties to improve its service. As indicated in the applications, each Station will be able to provide greater service to the areas and populations in the Los Angeles market. This is especially significant given the huge sprawl of the second largest television market in the country. By the use of the Mt. Wilson site, each of these DTV stations will be able to provide an optimum level of service in the market.

Absent the ability to collocate DTV facilities on Mt. Wilson, vast numbers of persons in the greater Los Angeles area will be deprived of full, reliable DTV service from the digital facilities to be operated by each of the Joint Parties. Each of the Joint Parties' facilities provides or can be expected to provide special and unique programming that is not otherwise available in the Los Angeles market. Individually, and particularly in the aggregate, these program service activities strongly support not only the grant of the minor change applications already on file, but also the grant of the additional maximization applications the Joint Parties intend to file by May 1, 2000. These factors also weigh in favor of the Commission interpreting the CBPA in a fashion that will not work against the interests of the Joint Parties or the audiences they plan to serve from the collocated DTV transmission site on Mt. Wilson. Simply put, while Class A television stations will play a role in local broadcasting, they should not serve to impede the ability

of full service broadcasters to continue to serve fully their communities of license and their markets.

III. NTSC COLOCATION AND NTSC FACILITY IMPROVEMENT MUST NOT BE COMPROMISED BY THE FCC'S IMPLEMENTATION OF THE CBPA.

Also on the matter of collocation, we turn the Commission's attention to the provisions of the CBPA and the *Notice* that address the extent to which Class A TV applications may be granted where this action would cause interference to NTSC service. As in the matter of DTV maximization, the Joint Parties urge the Commission to adopt a set of statutory interpretations that are consistent with rational communications policies aimed at ensuring improved television service by broadcasters that have served the public for considerable periods of time and remain the principal source of over-the-air television.

In the *Notice*, the Commission points out the anomalies that would occur from an overly literal interpretation of the CBPA in the context of new Class A stations' protection of NTSC service. There, the FCC proposes to impose the same kind of NTSC protection requirements that were advanced in the Commission's rulemaking proceeding¹⁷ on Class A television stations that was initiated in September of 1999, and terminated in the *Order and Notice of Proposed Rule Making* in MM Docket Nos. 00-10 and 99-292, *supra* note 1.

¹⁷ *Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service* in MM Docket No. 99-292, RM-9260, FCC 99-257, released Sept. 29, 1999.

On December 14, 1999, following the enactment of the CBPA, the Commission released its decision in a matter involving modifications to the NTSC operations of three stations in the Los Angeles television market.¹⁸ There the FCC allowed collocation of three television stations – and even waived the city grade contour coverage requirements for one of the stations as it would facilitate the construction of the applicants’ DTV facilities at the same antenna site. The Commission correctly concluded that “[c]ollocation of a station’s DTV and NTSC facilities with most of the other television stations in the market was an objective [the FCC] specifically recognized during [its] DTV proceedings as a means to speed DTV conversion.¹⁹ This policy should not be altered.

The Joint Parties urge the Commission to adopt a similar stance when NTSC applications are filed for collocation of NTSC facilities of existing stations at the site where these stations’ DTV facilities also will be located or where the NTSC station can improve its service to the public. If it does not do so, the promise of DTV service and the continuation of NTSC service until the 2006 date will not be met fully – not only in the Los Angeles and other congested markets but in myriad locations nationwide.

IV. THERE SHOULD BE NO FURTHER “ROUNDS” OF LPTV CONVERSION TO CLASS A STATUS FOLLOWING THE EXPIRATION OF THE DEADLINES SET FORTH IN THE CBPA.

In the *Notice* the Commission, perceiving an ambiguity in the language of the CBPA, asks interested parties whether it should allow LPTV licensees to apply for Class A status after the statutory periods for submitting a “certification of eligibility” and an

¹⁸ *KRCA License Corp., et al*, *supra* note 9.

¹⁹ *Id.*, quoting *Memorandum Opinion and Order on Reconsideration of Sixth Report and Order*, *supra* note 15.

application for Class A designation have expired.²⁰ The Joint Parties strongly recommend that it reject this notion as a general proposition and only permit it for LPTV stations responding to displacements or to other regulatory changes affecting all LPTV stations.

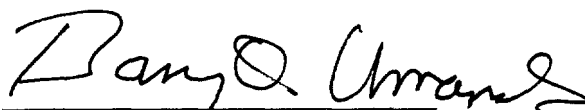
The CBPA was enacted to protect only a limited number of existing LPTV stations that otherwise would be terminated or at least find their services severely reduced due to the normal changes in the NTSC allocations environment and, specifically, the transition of full service television stations to digital technology. As acknowledged by the Commission in the *Notice*, this statutory provision imposes several significant changes to the policies and rules the Commission long has employed for the over-the-air television service. While the Commission should be true to the terms of CBPA, it also must adopt rule and policy changes that similarly are in conformance with rational communications policy, the provisions of the Communications Act of 1934²¹ and the long history of service by full service broadcasters. The Joint Parties find no foundation in the CBPA or its legislative history that would support the conferring of Class A status benefits on LPTV stations other than those that: (1) were in existence on the date of the CBPA's enactment; (2) meet the programming and operational requirements established for Class A designation; (3) would not violate the other terms of the CBPA aimed at protection of the NTSC and DTV service of full service television stations; and (4) are seeking changes based on displacements or changes in Commission rules or policies affecting all LPTV stations.

²⁰ See *Notice*, *supra* note 1 at ¶¶ 9, 31 and n. 42.

²¹ Communications Act of 1934, 47 U.S.C. § 151 et seq.

VI. CONCLUSION

For the reasons stated herein, the Joint Parties urge the Commission to adopt a regulatory regime in this proceeding that fully will protect the ability of television stations to maximize their DTV operations – through collocation and other means – and also will facilitate the collocation and optimization of NTSC facilities at the same antenna site as stations' DTV operations and elsewhere.



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